

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION**

JACK L. SISK and ELIZABETH M.)	
SISK,)	
Plaintiffs,)	
)	CASE NO. 1:10cv6
vs.)	
)	JUDGE HAYNES
HI-TECH AMERICA)	
DEVELOPMENT (HAD) III)	
CORPORATION, <i>et al</i>,)	
)	
Defendants.)	

**MOTION FOR SUBSTITUTION OF A PARTY
DUE TO DEATH OF DEFENDANT KENNETH FRANKLIN, SR.**


Plaintiffs, through counsel and pursuant to Fed R. Civ. P. 25 (a) (1), move this Honorable Court to order substitution of the proper parties. Specifically, the death of Defendant Kenneth Franklin, Sr. during the pendency of this action has been suggested upon the record. Plaintiffs would show that the claims against said party were not extinguished by his death. Therefore, good cause exists for this Motion to be granted and the Personal Representative of the Estate of Kenneth Franklin, Sr. to be substituted as a Defendant in this action. Attached is Plaintiffs' Memorandum in Support of this Motion. If the Court desires a hearing on this Motion, the Plaintiffs ask that it be set and noticed for a Columbia date and time that is convenient for the Court.

Respectfully Submitted:

UAW-GM Legal Services Plan
By: Shearon W. Hales
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Spring Hill, Tennessee 37174
(615) 302-1443 ext. #230
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that a true copy of this Motion has been served upon Richard Weldon, Attorney for Defendants Kenneth Franklin and Kenneth Franklin, Jr., at rweldonlaw@verizon.net and Defendant Ronald Konitzer at 5662 Chancellor Blvd., Vancouver, BC CANADA V6T1E3 on this 8th day of December, 2010.



Shearon W. Hales

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Defendants.)	

**MEMORANDUM IN SUPPORT OF PLAINTIFFS’
MOTION FOR SUBSTITUTION OF A PARTY DUE
TO DEATH OF KENNETH FRANKLIN, SR.**

Plaintiffs, through counsel and pursuant to Fed R. Civ. P. 25 (a) (1), have good cause to request that the Court order substitution of the Personal Representative of the Estate of Kenneth Franklin, Sr. as a Defendant in this action. Specifically, the death of Kenneth Franklin, Sr. during the pendency of this action has been suggested upon the record and the claims pending against said Defendant were not thereby extinguished.

LAW

Fed R. Civ. P. 25 (a) (1) provides that:

Substitution of Parties (a) Death (1). If a party dies and the claim is not thereby extinguished, the court may order substitution of the property parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons, and may be served in any judicial district. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

FACTS

The claims alleged in the Plaintiffs' complaint against Defendant Kenneth Franklin, Sr. are racketeering, fraud, breach of contract, and breach of fiduciary duty. Defendant Kenneth Franklin, Sr. died during the pendency of this action.

ARGUMENT

Plaintiffs, through counsel, submit to the Court that above referenced claim were not extinguished by the death of Defendant Kenneth Franklin, Sr. Good cause exists for the Court to order that the Personal Representative of the Estate of Kenneth Franklin, Sr. to be substituted, due to the death of Defendant Kenneth Franklin, Sr. during the pendency of this action, as a proper party Defendant in this case.

Respectfully Submitted:

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